

services performed by USWCS, the Agreement may be terminated by the State at the end of the period for which the funds are available. The State shall notify USWCS at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the State to terminate this Agreement in order to acquire similar services from another party. . . .

Master Agreement for Technology in Education, ¶ 14.8 (emphasis added)
In 1998, the Legislature appropriated \$14.7 million for the project. 1998 Session Laws of Wyoming, Chapter 30, § 205.

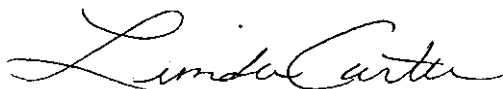
Thus, the WEN is mandated by the Wyoming Supreme Court and State Legislature. The contract under which Qwest provides services for the WEN has been properly executed. If the Form 470 process were to require competitive bidding for provision of these services for each funding year, it would undercut the integrity of the State contracting and procurement process, at a minimum require the State to consider violating the covenant of good faith that is inherent in all contracts, and most importantly, preempt state law. The only proper avenue for terminating the WEN contract is through non-appropriation of funding by the state legislature. The Form 470 process attempts to usurp this legislative function and preempt state law. Preemption of state laws is expressly forbidden in the FCC rules. 47 CFR § 54.504(a). Furthermore, the FCC rules allow for long term contracts such as the WEN. 47 CFR § 507(e).

The funding decisions on the Year 3 request illustrate the inconsistent manner that the School and Library Division has responded to the State's funding requests. Those funding requests for all Years 2, 3, and 4 are based on the same WEN contract and the same circumstances, yet for each funding year the result was different. The School and Library Division approved funding for Year 2 requests. In Year 4, some of the requests were approved based upon dates of Form 470s and Memoranda of Agreements. In Year 3, no funding requests were approved. The State finds it difficult to comprehend why Year 3 requests for school districts that qualified for Year 4 funding were denied despite the facts and circumstances being same for each district for both years. Attachment A is a chart showing the Year 3 and Year 4 FRNs falling into this category. These inconsistencies indicate that the processes used to determine approval of funding requests is arbitrary and capricious, an abuse of discretion and not in accordance with law. While Wyoming maintains that all funding requests under appeal should be funded, at the very least, the Year 3 funding for whose Year 4 companion requests were funded should likewise be funded.

Letter of Appeal
Schools and Library Division
April 11, 2002
Page 5

The State has made every attempt to comply with the requirements imposed on it by the School and Library Division staff for acquiring E-Rate funding for WEN services. However, in imposing those requirements, state law was ignored in contravention of FCC rules. Therefore, the State requests that the Funding Requests be reexamined with the proper consideration given to state law and that the Funding Requests be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda Carter".

Linda Carter
Department of Education

A handwritten signature in cursive script, appearing to read "Donald Gerstein".

Donald Gerstein
Senior Assistant Attorney General
Wyoming Attorney General's Office

Attachment A

District FRNs Not Funded in Year 3	
Big Horn #1	729612
	729613
	729617
	729618
Campbell #1	729673
	729674
	729678
Carbon #1	729682
	729683
	729687
	729688
Converse #1	729697
	729698
	729702
Coverse #2	729703
	729704
Fremont #38	729791
Johnson #1	729804
	729822
	729826
	729828
Laramie #2	729834
	729835
	729839
	729840
Niobrara #1	729879
	729880
	729881
	729884
Park #1	729885
	729886
	729890
Park #6	729891
	729892
Sheridan #1	729927
	729928
	729932
Sheridan #2	729936
	729937
	729939

District FRNs Funded in Year 4	
Big Horn #1	512259 617918
	515112
	515172
	514369
Campbell #1	512282 569117
	513041 613066
	569089
Carbon #1	512284 618094
	515126
	518049
	566393
Converse #1	512316 530735
	518055 559771
	520245 569132
Coverse #2	512318 530741
	520247 560181
	512895
Fremont #38	512895
Johnson #1	512910 569303
	515154 610595
	513062 613354
	566286
Laramie #2	512919 569336
	515158 610605
	518133 614095
	536566 618406
Niobrara #1	513195 560194
	513170 569379
	520251
	530773
Park #1	513197 569396
	513204 613517
	566393
Park #6	513203 569406
	566179 613536
Sheridan #1	513210 569434
	518230 618837
	566301
Sheridan #2	513214 618866
	518233
	566331

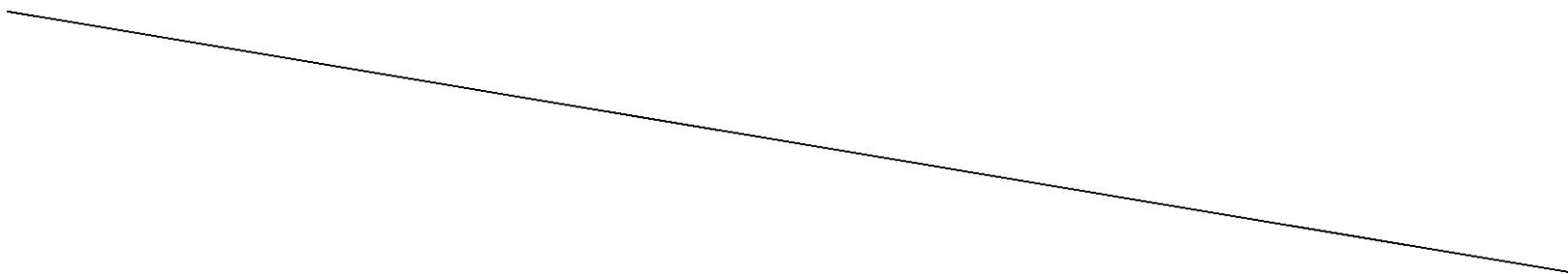
618155

569149

625659

	729948
	729957
	729958
Substrate #9	729962
	729963
	729964
	729965
Substrate #7	729966
	729970
	729974
	729972
Tetron #1	729976
	729980
	730023
Weston #7	730024
	730028
	730029

	555442
	514037 614036
	514040 614039
Substrate #8	514038
	555445
	514041
	514042
Substrate #1	514043 614035
	514022
	555440
	514031 614030
Tetron #1	550205
	559433
	513364
Weston #7	515166
	518410
	564537



C



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

October 21, 2002

Linda Carter
State of Wyoming, Dept. of Administration and Information
Hathaway Building, 2nd Floor
2300 Capitol Avenue
Cheyenne, WY 82002

10/21/02

DEC 16 2002

Re: Billed Entity Number: 154794
411 Application Number: 2021 11
Funding Request Number(s): 129606,129607,129611,129619,129626,
129631,129632,129633,129634,129663,
129664,129665,129666,129610,129611,
129612,129689,129690,129694,129695,
129696,129123,129124,129128,129729,
129730,129731,129732,129136,129131,
129138,129739,129744,129145,129146,
129764,129165,129166,129170,129711,
129114,129115,129783,129184,129185,
129786,129790,129791,129198,129199,
129803,129829,129830,129841,129842,
129863,129864,129865,129869,129870,
129871,129896,129898,129919,129920,
129921,129922,129926,129949,129950,
129954,129955,129956,129981,129982,
129986,129987,129988,129992,129993,
129994,129996,130000,130001,130002,
130003,130004,130007,130008,130009,
130010,130014,130015,130016,130017,
130021,130022,130098,130099,130100,
130101,130105

Your Correspondence Dated: April 11, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Three Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's

decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 129606,129601,129611,129619,129626,129631,129632,129633,129634,129663,129664,129665,129666,129610,729611,129612,129689,129690,129694,129695,129696,129123,729124,729128,129129,129730,729131,129132,729736,129131,129738,129739,129144,729145,129146,729164,729765,129166,129170,129111,129174,129775,129183,129184,129185,129786,129790,129191,129798,729199,129803,729829,129830,729841,729842,129863,129864,129865,129869,129810,129811,129896,129898,129919,129920,129921,129922,129926,129949,129950,129954,129955,129956,129981,129982,129986,129981,129988,129992,129993,129994,129996,130000,130001,130002,130003,130004,130001,130008,130009,130010,130014,130015,130016,130011,130021,130022,130098,130099,130100,130101,130105

Decision on Appeal: Denied in full

Explanation:

- In your letter of appeal you have explained that the reason these funding requests were denied was because the 28-day waiting period was violated. You have stated that this conclusion is inaccurate. The service for which support is being requested exists as provided by the State DOE pursuant to judicial and legislative mandates. The SLD requirement of Form 410 posting overlooks State law, which does not require competitive bidding, and the FCC mandates that the competitive bid requirements "are not intended to preempt state or local requirements". You further state that the "Wyoming Education Network has been mandated by the State Supreme Court and State Legislature", and that the contract under which Qwest provides services has been properly executed. If the Form 410 process were to require competitive bidding for these services each Funding Year, it would undercut the integrity of the State contracting and procurement process. You have also argued that the SLD has responded to the State's funding requests in an inconsistent manner as they have received full funding in FY 1999, partial funding in FY 2001, and no funding in FY 2000. You find it difficult to comprehend that FY 2000 requests for school districts that were approved in FY 2001 were denied when the circumstances were the same for both funding years. You then state that these inconsistencies indicate that the SLD's processes are arbitrary and capricious, an abuse of discretion, and not in accordance with law. You maintain that while all funding requests under appeal should be funded, at the very least, the Funding Year 2000 funding requests whose Funding Year 2001 companion requests were funded should likewise be funded. You have noted that every attempt has been made to comply with the SLD's requirements for acquiring funding for these services. However, in imposing these requirements, state law was ignored. The State requests that these funding requests be

reexamined with proper consideration given to state law, and that the requests be granted.

- Upon thorough review of the appeal, it was determined that all FRN's under appeal were correctly denied for violating the competitive bidding requirement. On appeal you have not disputed that the State Contract was signed without competitive bidding, but have argued that state law does not require competitive bidding and that state law should overrule the program rules of the SLD. You have cited the FCC (47 CFR 54.504) in stating that the competitive bid requirements "are not intended to preempt state or local requirements". However, the complete statement "These competitive bid requirements apply **in** addition to state and local competitive bid requirements and are not intended to preempt state or local requirements" clearly indicates the FCC's intention that while the SLD's program rules are not intended to replace state and local requirements, they are to be adhered to in addition to those requirements. You have also argued that if the Form 470 process were to require competitive bidding of these services each funding year, it would undercut the integrity of the State contracting and procurement process. Program rules do not require multi-year contracts to be posted for bid in each funding year of the contract. Program rules do require that the requested services be posted to the SLD website for competitive bid, and all proposals reviewed before entering into an agreement with a service provider. As per the SLD website, the Form 470 used to post for competitive bid can then be used for the life of the contract.
- You have further argued that the SLD has reviewed your Form 471 applications inconsistently as you have received full funding in Funding Year 1999, partial funding in Funding Year 2001, and no funding in Funding Year 2000. You find it difficult to comprehend that Funding Year 2000 requests for school districts that were approved in Funding Year 2001 were denied when the circumstances were the same for both funding years. You have requested that if the appeal is denied that the SLD fund the Funding Year 2000 funding requests that correspond to the approved Funding Year 2001 FRN's. However, the SLD's records indicate that the Contract Award Dates for approved FRN's on your Funding Year 2000 Form 471 differ from those on your Funding Year 2001 Form 471. The SLD's records verify that you were contacted on 1/15/2002 and at that time confirmed that the Contract Award Dates and corresponding Form 470 numbers were correct. As the SLD is not permitted to accept information on appeal that was not made available during initial review, this request cannot be granted.
- *Your* funding requests have been denied for violating the 28-day competitive bidding requirement. On appeal you have not disputed that you entered into a contract before posting this service for competitive bid, but have argued that program rules do not take precedence over state procurement requirements. As the FCC has consistently ruled that the competitive bidding requirement must be

followed, and you have failed to provide evidence that you have complied with this requirement, the appeal is denied.

- You signed a contract for new services prior to the expiration of the 28-day posting period. FCC rules require that except under limited circumstances, all Forms 470 received be posted on the website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting a Form 471. *See* 47 C.F.R. §§ 54.504; 54.511(a), (c). FCC rules further require that the Administrator send the applicant a confirmation when the Form 470 has been posted, and inform the applicant of the date after which the applicant may sign a contract with the vendor it selects. *See* 47 C.F.R. § 54.504(b)(4). These competitive bidding requirements help ensure that applicants receive the lowest pre-discount price from vendors. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098 ¶ 9 (1997). New services include tariff telecommunications services that are NOT subject to an existing, binding, written contract.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. The FCC **must** RECEIVE your appeal **WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER** for your appeal **to** be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the “Appeals Procedure” posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company